

Appl. No. 10/032,693
Amdt. Dated December 15, 2003
Reply to Office Action of August 15, 2003

REMARKS

Claims 1 through 13 are pending in the present application. In the Office Action, claims 1 to 13 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,303,710 to Bullard et al. (hereinafter "Bullard").

Applicants respectfully submit that Bullard does not expressly or inherently disclose all of the elements set forth in present independent claim 1. Thus, Bullard does not anticipate claim 1 or claims 2 to 13 that depend therefrom.

Independent claim 1 clearly provides a non-resilient flexible tubing for use in a cassette for a disposal system, the tubing comprising a mono-layer high density polyethylene film resin with both a low melt index and a high density. The mono-layer high density polyethylene film resin of claim 1 exhibits a low melt index in combination with high molecular weight, thereby rendering the film uniquely suitable for use in cassette tubing due to increased barrier properties and tear strength.

Bullard does not disclose a non-resilient flexible tubing for use in a cassette for a disposal system comprising a mono-layer high density polyethylene film resin with both a low melt index and a high density. Rather, Bullard is directed to a co-extruded multi-layer structure comprising at least one layer of low density, general purpose polyethylene film resin that is bonded to a

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second layer, the second layer being a dissimilar polymer blend comprising high density polyethylene and polyethylene copolymers. Thus, Bullard clearly discloses a two-layer structure, unlike the mono-layer of claim 1.

Bullard further discloses that the multi-layer structure enables the use of a predominate amount of relatively low cost resinous materials. The combination of these materials with a relatively thin layer of a resinous blend, which comprises a high density polyethylene homopolymer, provides a film that provides both economy in manufacturing costs and increased strength (column 1, line 61 to column 2, line 22).

Accordingly, for at least the reasons discussed above, independent claim 1 is patentable over Bullard. Since claims 2 to 13 depend from claim 1 and provide further features, they also are clearly distinguishable over Bullard for at least the reasons discussed.

For example, dependent claim 12 further provides a film having a deodorant. Dependent claim 13 further provides a film having a fragrance. Neither a deodorant nor a fragrance is disclosed by Bullard. Accordingly, claims 12 and 13 are patentable over Bullard for these additional reasons.

Concerning the rejection of claims 4 to 10 under 35 U.S.C. § 103(a) as being obvious over Bullard, Applicants respectfully point out, as discussed, that Bullard does not disclose a non-resilient flexible tubing comprising a mono-

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layer high density polyethylene film resin with both a low melt index and a high density. Since claims 4 to 10 depend from claim 1 and provide further features, they also are clearly distinguishable over Bullard for at least the reasons discussed with respect to claim 1.

To establish a proper *prima facie* case of obviousness, it is required that the reference (or combination of references) disclose or suggest all of the limitations of the claims in question. Since Bullard does not disclose or suggest all of the limitations of claim 1, it does not render the claim 1 obvious. Thus, claim 1, and claims 4 to 10, which depend directly or indirectly therefrom, are not obvious over Bullard. Therefore, the rejections of claims 4 to 10 under 35 U.S.C. § 103(a) should be reconsidered and withdrawn, and claims 4 to 10 should be allowed.

Claims 12 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Bullard in view of U.S. Patent No. 5,129,735 to Neal (hereafter referred to as "Neal").

As discussed, there is no disclosure or suggestion anywhere in Bullard of a non-resilient flexible tubing comprising a mono-layer high density polyethylene film resin with both a low melt index and a high density. Since claim 12 depends from claim 1 and provides further features, it also is clearly distinguishable over Bullard for at least the reasons discussed with respect to claim 1.

Applicants further point out that Neal, similar to Bullard, is directed to a multilayer film. Neil

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specifically discloses an inner polyethylene layer and an outer carbon containing polyethylene layer, which is made integral with the inner layer by co-extruding the polyethylenes in the liquid state (column 2, lines 23 to 29). Neil does not disclose a non-resilient flexible tubing comprising a mono-layer high density polyethylene film resin with both a low melt index and a high density, as is clearly recited in independent claim 28 (and claim 1).

Accordingly, neither Bullard nor Neil discloses or suggests a non-resilient flexible tubing comprising a mono-layer high density polyethylene film resin with both a low melt index and a high density. The combination of Bullard and Neil therefore does not disclose or suggest the instant claims. As mentioned above, to establish a proper *prima facie* case of obviousness, it is required that the combination of references disclose or suggest all the limitations of the claim in question. Since the combination of Bullard and Neil does not disclose or suggest all of the features of independent claim 1, it does not render obvious claim 1, or claim 12, which depends from claim 1. Accordingly, the rejection of claim 12 under 35 U.S.C. § 103(a) should be reconsidered and withdrawn, and claim 12 should be allowed.

Claim 13 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Bullard in view PCT Patent Application number WO/ 02/42364 to Van Gelder (hereafter referred to as "Van Gelder").

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Applicants respectfully assert that the inventions of Bullard and Van Gelder are not physically combinable, as the suggested combination would render Bullard inoperable for its intended purpose. Specifically, Bullard is directed to a film for providing increased strength and reduced tendency to rupture under load stresses. The Bullard film is formed from a multi-layer structure comprising at least one layer of low-density polyethylene resin and a second layer comprising a high-density polyethylene copolymer. The high-density copolymer of the second layer provides the improved stiffness, i.e., modulus and strength characteristics not available in general purpose low density polyethylene resins.

In contrast, Van Gelder is directed to a film having a highly porous polymer or co-polymer. The high porosity enables an added fragrance to be absorbed into the porous polymer by capillary force. Thus, were the film of Bullard to be modified as suggested by the Action, it would not provide the improved stiffness, i.e., modulus and strength characteristics that are the focus of Bullard.

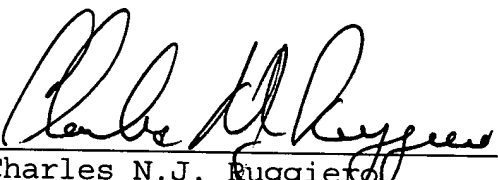
Also, Applicants assert that absent hindsight from Applicants' disclosure there is no motivation to combine Bullard, directed to a multi-layer polyethylene film, and Van Gelder, directed to a single layer polyethylene film, to form a single layer film having a fragrance, as is clearly claimed in claim 13. Accordingly, the rejections of claim 13 under 35 U.S.C. § 103(a) should be withdrawn and claim 13 should be allowed.

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In view of the foregoing, Applicants respectfully submit that all claims presented in this application patentably distinguish over the prior art. Accordingly, Applicants respectfully request favorable consideration and that this application be passed to allowance.

Respectfully submitted,

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Date



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